

### **REMARKS/ARGUMENTS**

In response to the Office Action mailed January 30, 2006, Applicants amend their application and request reconsideration in view of the amendments and the following remarks. In this amendment, Claims 1, 3, 7, 13, 14, 15, 16, 17, 18, 20, 24, 30, 31, 32, 33 and 34 are amended, no claims have been added, and Claims 2 and 19 have been cancelled without prejudice so that Claims 1, 3-18 and 20-34 are currently pending. No new matter has been introduced.

Claims 1-34 were rejected as being unpatentable over U.S. Patent No. 6,361,559 to Houser et al. (Houser). This rejection is respectfully traversed.

The MPEP, in section 706.02(j), sets forth the basic criteria that must be met in order to establish a *prima facie* case of obviousness:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In *re* Vaeck, 947 F.2d, 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.

Section 2143.03 of the MPEP clarifies certain criteria in section 706.02(j).

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In *re* Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1074). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In *re* Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In *re* Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)."

The present invention, as claimed in amended Claim 1, is directed to a device for joining substantially tubular organisms. The device comprises an anastomosis device, a biocompatible vehicle and at least one therapeutic agent. The anastomosis device includes a fastening flange and a plurality of staples attached thereto and having sharpened ends and barbs. The present invention, as claimed in amended Claim 18, is directed to a medical device for joining tissue. The device comprises a surgical clip, a biocompatible vehicle and at least one therapeutic agent. The clip comprises a needle, a holding device and a suture. The holding device comprises first and second limbs for penetrating and holding.

Houser discloses sutureless anastomosis systems for securing a bypass graft to a host vessel or other tubular structure including a bypass graft and fittings. Various embodiments of the thermally secured device are described.

Houser fails to disclose or suggest the unique combinations of Claims 1 and 18. specifically, Houser fails to disclose the fastening flange and surgical clips as claimed, in the independent claims. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

A favorable Action on the merits is earnestly solicited.

Respectfully submitted,

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